IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5177 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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RAJU KAMETIA GANGDEKAR CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5177 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 20.4.2002 passed against him by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The detaining authority has recorded its subjective satisfaction on the set of papers submitted by the sponsoring machinery wherein the petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

3. The bunch of papers supplied to the detenu with the grounds of detention served on the date of execution of the order of detention, reveals that the petitioner was found involved in one serious communal riot case being Sardarnagar Police Station CR No. 58/2002 for the offences punishable under Sections 143, 147, 148, 149, 436, 188, 427 of the Indian Penal Code and Section 135(1) of the Bombay Police Act. The alleged incident had occurred within the area of Sardarnagar Police Station of City of Ahmedabad on 28.2.2002. The detaining authority has considered the papers of criminal case registered against the petitioner along with other accused and so also two statements of un-named witnesses recorded on 16.4.2002 and 17.4.2002 respectively. Both these witnesses were called by the detaining authority on 19.4.2002 and verification was personally recorded by the concerned authority and on the very next day i.e. on 20.4.2002, the order of detention under challenge has been passed.

4. Mr. H.R.Prajapti, Ld. counsel appearing for petitioner has taken me through the entire memo of the petition and the order of detention is challenged on number of grounds. However, ld. counsel for the petitioner has concentrated her arguments mainly on two grounds. The first point argued by ld. counsel Mr. Prajapti is that the order under challenge has been passed mechanically as the sponsoring authority has placed the papers mainly based on a criminal case registered against the petitioner. The second point argued by ld. counsel for the petitioner is that the petitioner has no criminal antecedents prior to the date of offence and the case registered against the petitioner being a solitary case, he could not have been branded as "dangerous person". Statements of two witnesses have been mechanically recorded and there is nothing in the statement of two un-named witnesses that the activities

of the petitioner was a challenge to the maintenance of the "public order". Of course, in the alleged incident occurred on 28.2.2002, huge loss and damage to the properties was caused, but there was a big mob on account of incidents of communal conflicts. It is rightly argued that the detaining authority ought to have recorded satisfaction that the petitioner requires to be detained and his free movement may prejudice or disrupt the "public order". It is true that for a single offence or a dangerous act, a person can be detained. However, it is obligatory on the part of the detaining authority to get satisfied that unless the detention order is not passed, detenu would indulge in similar type of dangerous activities which would disrupt the "public order". It is submitted by ld. counsel for the petitioner that after appreciating the papers of the police case, prima facie, registered against the petitioner, the competent Court has granted bail to the petitioner. When the Criminal Court has accepted that discretion requires to be exercised and petitioner should be granted bail, then it would not be otherwise justified or proper to keep the petitioner in prison under the detention laws unless it is satisfactorily accepted that but for the preventive detention, he/she would continue to indulge in similar activities prejudicial to the "public order". Gravity of the offence as well as development of normalcy in the area where alleged incident had occurred, are both relevant facts. It is rightly submitted that this is the case wherein State of Gujarat should have revoked the order of detention after lapse of certain period from the alleged sole incident. For short, the continued detention of the petitioner in reference to the above set of facts, is bad and illegal and so on both these counts, the continued detention of the detenu requires to be held as bad-in-law and illegal.

5. Ld. AGP Mr. A. Y. Kogje while resisting the petition, has submitted that in view of the ratio of the decision of this Court in the case of Smt. Rohanbibi Mahommandkhan Pathan v/s State of Gujarat, 1990(2) GLH P.1, the order of the detention should be held valid. In the cited decision, the petitioner lady was found involved in the activities of bootlegging and she had challenged the legality and validity of the order of detention. Reliance is placed on the observations made by the Division Bench in para-16 of the decision wherein the Court has held that the subjective satisfaction arrived at by the detaining authority under Section 3 and under Section 9(2) of the PASA Act, requires to be appreciated on factual matrix of each case. In the cited decision, names of witnesses were not disclosed due to

possibility of flaming up of communal riots. Satisfaction recorded by the authority and the reasons assigned for recording the subjective satisfaction was found valid. This decision would not help the State in any manner because the same is based on totally different set of facts.

6. The second decision relied on by the ld. AGP Mr. Patel is in the case of Indersing Gulabsing Shikh v/s State of Gujarat, 1993(2) GCD 842 (Guj.). In the cited case, the detenu was found involved in the offence punishable under the Arms Act and said to have been indulged in violent activities constituting disturbance to the "public order". The petitioner detenu was found involved in 9 different cases as well as 4 different un-named persons have given their statements describing the activities of the petitioner and the detaining authority satisfied that the petitioner is a "dangerous person". Observations of this Court in reference to the arguments advanced by the ld. counsel appearing in the matter in para-9 of the cited decision, has been read over to the Court, wherein the Court has held that there are various categories of anti-social elements described in Section 3 of the PASA Act viz. dangerous person, bootlegger, persons indulged in immoral traffic and property grabbers and on facts, the Court found that petitioner Indersing is a "dangerous person". While in the present case, the petitioner is found involved in criminal case of communal violence and has no other criminal antecedents. So, this decision also would not help the respondent.

7. For the reasons recorded in the oral judgment, petition is allowed to the extent that continued detention of the detenu pursuant to the impugned order of detention dated 20.4.2002 passed by the Police Commissioner, Ahmedabad City, against the detenu is hereby held to be illegal and bad in law and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute accordingly. Direct service is permitted.

23.7.2002 [C.K. BUCH, J]
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